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▶ **Guidelines for Reinforcing
the Role of Labour Inspectors
in Addressing Undeclared Work**





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Employment and Social Affairs Platform 2¹

▶ Guidelines for Reinforcing the Role of Labour Inspectors in Addressing Undeclared Work

The ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204),² establishes the importance of “an adequate and appropriate system of inspection, [to] extend coverage of labour inspection to all workplaces in the informal economy in order to protect workers, and provide guidance for enforcement bodies, including on how to address working conditions in the informal economy”.³ In this review, we provide a brief description of the main recommendations set by the ILO for effective labour inspection to implement undeclared work strategies in this area.

▶ ILO recommendations for effective labour inspection approaches to tackle undeclared work

This section is divided into two parts. First, the necessary framework for an effective labour inspection approach to undeclared work is briefly introduced. This is followed by general guidelines for strengthening labour inspection in combatting undeclared work.

▶ Necessary conditions for effective labour inspection

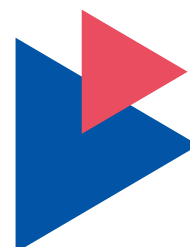
1. Labour inspection has a primary policy and operational responsibility for tackling undeclared work. To carry out these functions effectively, adequate numbers of qualified staff, as well as sufficient financial and other material resources must be provided to ensure the effective performance of the inspectorate’s duties.
2. The governments of the participating economies should undertake a proper *assessment and diagnostic of factors*, characteristics, causes and circumstances of informality in the national context to inform the design and implementation of laws and regulations, policies and other measures aimed at facilitating a transition to a formal economy.⁴

¹ The Employment and Social Affairs Platform (ESAP) 2 is funded by the European Union.

² http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204

³ Paragraph 27 of Recommendation No. 204.

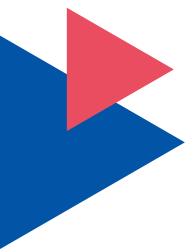
⁴ Paragraph 8 of Recommendation No. 204.



3. An effective national policy requires a *strong commitment from participating economies to draft and implement a comprehensive policy framework* to tackle undeclared work. This should be translated into an enabling institutional environment in which the role of the central authority in charge of policy and strategy implementation is clearly defined, the responsibilities of concerned bodies identified and coordination mechanisms set. Policies should inform national programmes with defined outcomes, time frames, responsibilities, and monitoring and evaluation mechanisms.
4. *Social dialogue* should be considered to be a cross-cutting policy driver, embedded in all strategies and actions.
5. Participating economies should take the necessary steps to improve the economic background by creating conditions for healthy competitiveness for business, sound labour market regulation, and social protection policies that are properly sustained and financed. In this view, administrative burdens, where appropriate, should be reduced for employers in order to improve labour law compliance, namely by making registration of workers, social security declaration and payment of social contributions easier through accessible and simple procedures (paying particular attention to excessively long timeframes that could interfere with inspection). Incentives for formalization should be studied and proposed, where appropriate.
6. *A comprehensive legal labour framework* is also required. This implies:
 - (i) a clear definition of undeclared work (whether in law and/or at an administrative level), in which all expressions of the phenomenon are considered, and distinguished from different, but related concepts, such as illegality, informality and labour and social fraud;
 - (ii) straightforward drafting of the legislation so that it is easy to comply with and for the authorities to enforce; and
 - (iii) a clear statement of the powers of enforcement.

Up-to-date international labour standards play a key role, providing guidance and setting the elements that participating economies should address when drafting effective national legislation.

7. There should be an effective *deterrence system* in line with close cooperation between the enforcement authorities and the judiciary, reinforced by the following strategic guidelines:
 - (i) effective and dissuasive sanctions to deter undeclared work. In this respect, sanctions should be proportional to the infraction and there should be summary procedures to enforce them without unnecessary delays;
 - (ii) innovative approaches should be established as complementary to traditional sanctions that encourage and improve compliance and are integrated with other strategies for combating undeclared work;
 - (iii) sanctions procedures and liability mechanisms need to be improved at economy and cross-border levels to enhance the effectiveness of sanctions.

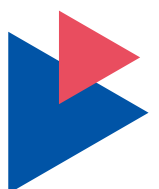


8. Strategies for undeclared work should include a *strong awareness-raising dimension*, with campaigns aimed at changing the local culture on what is socially acceptable, not only because it is “legal” or “illegal”, but because it is a violation of fundamental rights at work. Both prevention and deterrence measures should be included in the strategy.

▶ Guidelines for strengthening labour inspection in combatting undeclared work

▶ Setting strategies and plans and effective administration of resources

9. *Devising strategic plans and programmes* on undeclared work should be done on a periodic basis in consultation with other relevant authorities and with the social partners. Strategic planning entails, among other things, the following elements:
 - (i) The development of '*undeclared work risk indicators*' is essential for planning inspection visits. It results in much more accurate enforcement activity, ensuring that the labour inspectorate does not use resources to supervise compliant enterprises and thus may maximize its efforts to identify non-compliant economic units to bring them into compliance.
 - (ii) *Setting of clear targets and tailored approaches* to address the diversity of characteristics, circumstances and needs of workers and economic units present in the undeclared economy.
 - (iii) Rights of *vulnerable groups* should be prioritized. Labour inspectors should consult with migration authorities to ensure the legitimate protection of migrant workers' rights, even in situations of illegal work.
 - (iv) While defining the *labour inspection policy* for undeclared work, the central authority shall:
 - a. take into consideration that there should be an appropriate *balance with other areas*, such as occupational safety and health;
 - b. develop evidence-based plans for *sectors* and regions in which there is a known or suspected prevalence of undeclared work.
 - (v) Scoreboard methods, among others, should be established to *monitor and measure* the impact of annual inspection plans to combat undeclared work to increase their effectiveness and impact. This will ensure that the actions undertaken deliver the results planned. It will also improve transparency and establish milestones as a basis for future planning.
10. A prerequisite for setting strategies and planning is the establishment of *well-resourced information systems* that provide reliable data in a systematic way. This will allow the labour inspectorate to perform an in-depth analysis with the aim of detecting patterns and trends and planning and evaluating its activity.



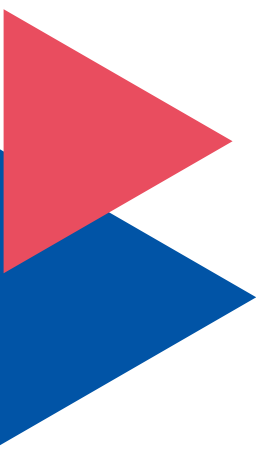
11. *Information technologies* should have a wider use in terms of prevention, detection and publicity. Specific importance should be given to combine different databases with a view to discovering infractions at all levels (social security, taxes, labour law, occupational safety and health). Improvement of the quality and accessibility of data should be a main objective. Governments shall ensure that the level of confidentiality assigned to this data does not impede the sharing of information between relevant government agencies; neither should it prevent the legitimate publication of the identity of enterprises that abuse undeclared work. Such publicity can have a valuable function in discouraging such practices and alerting workers. New ways of using collected data and the media should be explored.
12. *Adequate training* should be imparted on a *regular basis* to labour inspectors dealing with undeclared work. Such training should focus on applicable legislation, identification of different types of labour and social fraud, understanding of accountability and finances, and the complementary roles of other institutions tackling similar subjects. Special attention should be paid to sensitization training to prepare inspectors to deal with undeclared workers who may be in abusive employment situations and who lack the language skills, knowledge or representation to defend their own interests effectively.
13. Given the complexity of undeclared work, *group specialization* has proven to be good practice in tackling it. These specialized groups often have specific and enhanced training in undeclared work issues and their members come from different government agencies in order to act in an integrated and coordinated manner.

► Proactive role of the labour inspectorate

14. Labour inspectors should adopt a *proactive approach* to tackling undeclared work, seeking a sustainable transition to the formal economy. Narrow thinking should be avoided, making full use of all inspection powers and prerogatives to attain compliance, and leveraging the action of all actors who may influence compliance.
15. Inspection visits should consider *all aspects of undeclared work* and not solely workers' undeclared status. For example, when a situation of undeclared work is detected, inspectors should make sure that the worker's benefits (and any outstanding remuneration) are paid. Inspectors should also assess the safety and health conditions of the workplace and take action in cases of non-compliance (imposing fines or reporting to the prosecutor or responsible institution)
16. *Education and advisory programmes* for social partners and the public at large should also be considered as part of labour inspectorates' overall response to undeclared work and as a component of awareness-raising and prevention activities. Special campaigns or targeted activities can contribute to the general effort against this phenomenon, and the use of pilot projects or campaigns can help test innovative approaches or new ideas. Because undeclared work is a longstanding and deeply entrenched challenge, such activities should be undertaken in the context of an overall strategy or programme on undeclared work. In this respect, it is highly recommended that any strategy use a combination of approaches to undeclared work, including information and awareness-raising, prevention and deterrence (sanctions).

► Cooperation

17. Clear criteria of *cooperative action among different enforcement authorities* should be fostered through legislation, cooperation agreements (Memorandum of Understanding) and strategies. Governments should improve and consolidate intragovernmental networking, providing the policy and legal background so that effective forms of cooperation can be established.
18. *Cross-sharing of data* improves efficiency and encourages collaboration, giving various government institutions a better overall picture of undeclared work and an improved ability to tailor their responses.
19. *Joint inspection actions* between labour relations, occupational safety and health, social security, tax and migration enforcement authorities should be developed to enable a holistic approach to undeclared employment and to ensure that all aspects of working conditions are covered. This practice strengthens coordination and knowledge-sharing between the different inspection bodies.
20. Collaboration *with social partners* at all levels should be given special importance. Cooperation between government, workers and employers should be encouraged across all levels of the industrial relations system. Workers' and employers' organizations should engage regularly with labour inspection authorities as part of their own activities concerning undeclared work to discourage social dumping and protect workers' rights regardless of their legal status in the local context. Efforts should also be made to encourage collaboration between undeclared workers themselves and inspection authorities (for example, a guaranteed period of residence for undocumented migrant workers who report situations of undeclared work to inspectors).
21. On its own, action against undeclared work at an economy level is not enough, especially given its often cross-border nature (for example, migrant labour, posted workers). Complementary action should be taken at the *international and regional levels*, such as: knowledge sharing through common-access databases, common registries, joint inspections between inspectorates (particularly near border zones) and joint training activities and secondments, which should be considered as a way to build professional networks among inspectorates and improve understanding between different inspection systems. Consideration should be given to developing a coordinated sanction system at the regional level, particularly with regard to cross-border enforcement.

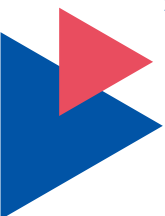


▶ Annex I

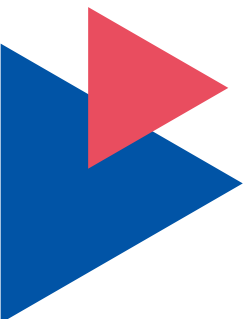
▶ Planning steps for an inspection campaign against undeclared work

Schematically, the planning of a campaign to address undeclared work at economy level should include the following steps:

1. The time horizon for planning should be more than a year in order to consolidate the objectives to be achieved. For example, labour inspectorates could plan a three-year campaign. The campaign can target all economic sectors, or just one where this problem is more pronounced. However, the first general campaign must always be comprehensive.
2. The objectives can include:
 - ▶ reducing the proportion of undeclared work within three years (*choose risk assessment indicators and assess their evolution before and after the campaign*);
 - ▶ a quantitative increase in social security contributions;
 - ▶ a reduction in the number of complaints to the labour inspectorate;
 - ▶ implementation of a certain number of information actions to the target audience by the different institutions participating in the campaign;
 - ▶ a number of inspection actions in workplaces;
 - ▶ increasing the number of infringement notices (*although of course over time, if the campaign is successful, it is assumed that this number will fall*).
 - ▶ increasing the number of conversions of bogus self-employed workers into regular employees.
3. Obtain the approval of the government, if needed, explaining the strategic objectives, based on official statistical evidence, news of the phenomenon on social networks and the media, the concerns of the social partners and the information collected by labour inspectors.
4. Include the social partners in designing the campaign, presenting a simple and informative document setting out advantages. A multidisciplinary working group, with representatives of all social partners, should be appointed to prepare the planning and corresponding action plan.
5. Planning can be based on different methodologies, such as the balanced scorecard, always including a risk assessment, as already described.

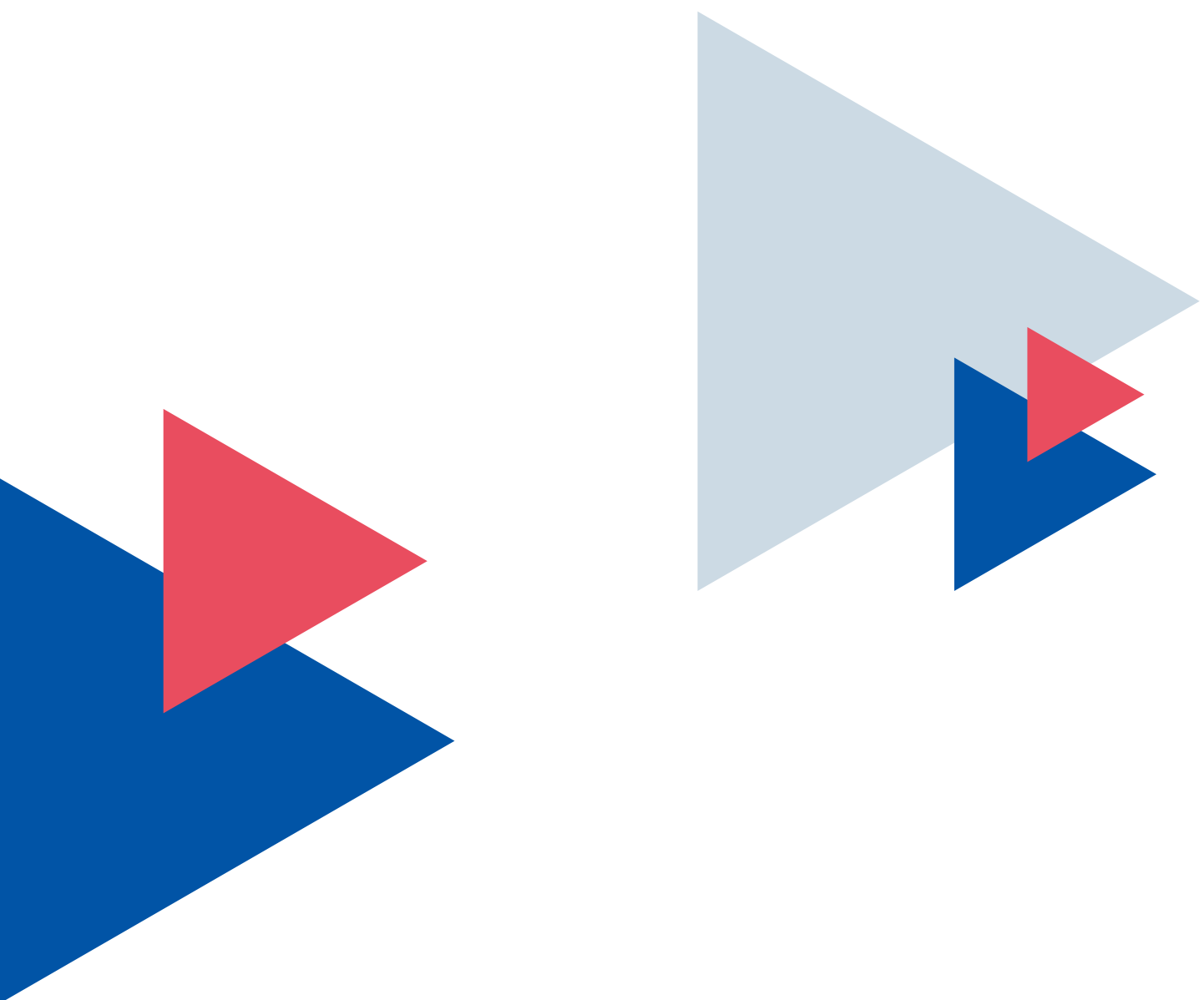


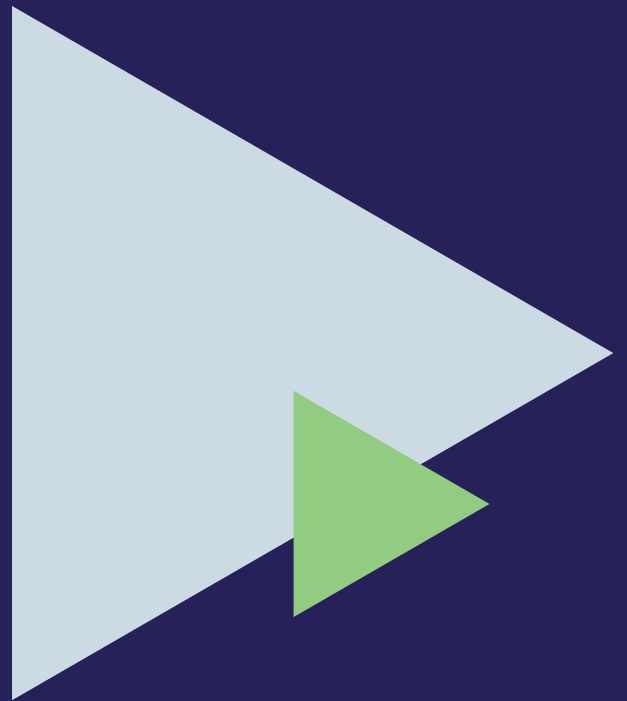
6. The campaign should always go through three operational phases: a disclosure and information phase, an inspection phase, and an evaluation phase.
7. After the planning has been agreed with the social partners, the other inspection bodies should be invited to join the campaign: the tax authority, the social security inspectorate, the economic inspectorate, and different kinds of police, including foreign and border police, if any.
8. Then, other non-inspecting partners should be invited: universities, vocational training schools, technological centres, employment services, national statistical offices, professional regulation bodies, and so on.
9. Two working groups should be appointed to oversee the campaign: (i) one, with representatives of the social partners and the labour inspectorate, meeting at least every two weeks – this group may also have a government representative; another (ii), more extensive working group, with representatives from each of the partners involved in the campaign – this group should meet every two months.
10. The campaign may then begin with its steps well defined:
 - ▶ *Disclosure and information phase:* initial presentation of the campaign to the media (also using an opening press conference); use of outdoors activities, leaflets and some merchandising; advertising in newspapers and magazines, both physical and online; radio and television spots. The advertising and publicity phase will depend a lot on the existing budget and will run throughout the campaign; the informational feature will consist of seminars, conferences and debates, led by the social partners, as well as by the different inspectorates, municipalities, universities, schools and professional schools, research centres, and media bodies. During this time, the public is informed about the goals of the campaign, what companies are expected to do, and what are the best approaches to legal compliance. This phase and the disclosure/dissemination phase occur simultaneously. However, the information phase will not last for the entire campaign and will end before the inspection phase.
 - ▶ *Inspection phase:* this is the period in which inspections take place, not only in workplaces, together with all the other inspection bodies, but also including meetings with employers. Inspections are likely to be more thorough, whether in specific sectors, or across the board, if inspection visits are announced in advance. This may enhance the deterrent effect. A deterrent effect is desirable because resources are scarce and some workplaces are difficult to access. Thus, it can be announced in the media that, in a specific period, inspection actions will be carried out in a chosen economic sector. It may also be announced that compliance with the law is expected in these actions. Before the development of inspection actions, the Labour Inspection Directorate may also call on employers' associations and/or the most significant companies in a specific economic sector in a first attempt at self-regulation. After the field inspection actions, the same business actors may be called in again for a second meeting to make a new attempt at self-regulation. However, this second meeting should not forgive any sanctions



that have resulted from the inspection action. It will also carry out a review of inspection actions, stressing that they will resume. The results of the inspection action should be made publicly available in the media as quickly as possible.

- ▶ *Evaluation phase:* after the inspection period, a balance must be drawn between the results achieved and the predetermined objectives. A detailed written report should always be prepared, with a clear conclusion taking into account the objectives. The report must obtain general approval from all campaign partners. This document must be sent to the government and publicly presented to the media. The results achieved must serve as inputs for the inspectorate digital platform – or a multitude of databases – which will allow updates an upcoming risk assessments.





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